

CASE NO.:
Appeal (civil) 424 of 2008

PETITIONER:
STATE OF U. P. & ORS.

RESPONDENT:
WASIM AHMED

DATE OF JUDGMENT: 15/01/2008

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

O R D E R

(Arising out of S.L.P. (C)No. 11394 of 2006

1. Leave granted.
2. This appeal is directed against a final order dated 8th of December, 2005 passed by a Division Bench of the High Court at Allahabad in First Appeal No. 306 of 2002, by which the Division Bench of the High Court had declined to interfere with the findings of the trial Court and dismissed the appeal.
3. We have heard the learned counsel for the parties and after going through the impugned order, we are of the view that the impugned order cannot be sustained as it appears to us that the Division Bench, while deciding the appeal, has not at all applied its mind nor has considered the points raised by the parties before it. The Division Bench, while dismissing the appeal, had made the following order :-
\023Sri Alok Kumar Singh submitted that although nine issues were framed but the same were decided in 33 lines only, therefore, the judgment is bad. However, we have perused the judgment and found that there is nothing bad in the judgment

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In view of above, the appeal lacks merit and is, therefore, dismissed.\024

4. A perusal of this order would show that the Division Bench, without going into the merits of the appeal and without applying its mind, had dismissed the appeal only by saying that on perusal, it was found that there was nothing bad in the judgment. In our view, since the appeal was a first appeal i.e. the appeal had to be decided not only on law but also on facts, it was the duty of the Division Bench to apply its mind and decide the same in accordance with law after passing a speaking and reasoned order.

5. For the reasons aforesaid, we are unable to sustain the order of the Division Bench and accordingly, set aside the judgment of the Division Bench of the High Court and send it back to the High Court for a fresh decision in accordance with law after giving hearing to the parties. It is expected that the High Court shall decide the appeal within two months from the date of communication of this order to the High Court. No unnecessary adjournments shall be granted to either of the parties.

6. The appeal is thus allowed to the extent indicated

above with no order as to costs.

JUDIS